The Infamia of the Roman Republic

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"The infamia of the Roman Republic".
The Infamia of the Roman Republic

If we attempt to write an account of the origin and history of that peculiar institution which the Romans called 'infamia,' we find that the task is not as easy a one as it might at first seem. A great deal of the difficulty lies in the indefiniteness of the fact that 'infamia' did not have its origin in a law definitely stating the conditions under which it should exist nor did it have its different phases develop by reason of certain fixed principles or laws. But when we consider the prominent place that custom occupied in the minds of the Romans and when we consider in connection with that the nature of 'infamia,' we can readily see why it was natural that the conception of it should be a gradual development from custom rather than law.

Before attempting to give an adequate definition of 'infamia' we must take into consideration the fact that, to a certain extent, it was dependent upon the customs and ideas of social life. Indeed it is to this very question of
institutes 'infuria' or rather to its positive side 'existimatio' that the turn for proof of the statement that social relations and social views do influence the law. To a certain extent law yields to the judgment of society and in some cases imposes legal disabilities on persons whom society has declared to fall short of its standards. It is this 'existimatio' for in modern language 'civil honour' which gives rise to the 'infuria' which holds such a peculiar and yet prominent position in Roman law. Indeed so prominent was the place it held that civil honour at Rome came to be known entirely under its negative aspect.

If we take the word honour alone we find that it refers to social relations. Solin (p. 190) says that "to be honoured is to be allowed one's full worth in society" and we know that if a person is to receive honour his actions must be in accordance with the standards which society sets up for itself. It is by the absurd odium of hypostasis.
commands of law and morality as well as the decree of mere usage. In other words, rigorous medical qualification in the eye of society. Just so civil honour must mean qualification in the eye of the law. From this, loss of honour would come to mean at least partial disqualification in the eye of the law.

In all treatises on Roman law we find the expressions, taken bodily from the Latin: 'consumanctio existincionis' and 'minuitio existincionis' both referring to civil honour. The former, 'consumanctio existincionis' refers to the destroying of the civil honour of a Roman citizen while the latter, 'minuitio existincionis' is that which we refer to as loss of civil honour. We have already found civil honour to mean qualification in the eye of the law. Thus this loss of civil honour—that is the diminution in the eye of the law—means disqualification from some cause or other in the eye of civil honour that the whole question of 'infamia' deals.
To the Romans 'infamia' meant civic disability based on moral imperfection. The disqualification was based on an injury to reputation, which as the Romans called it. Since 'exsudatio' itself was not a definite uniform conception but differed according to the needs of the community, 'infamia' resulting from 'exsudatio' could not have been a definite uniform procedure. The idea of personal responsibility was involved in 'infamia' since it always followed as the result of a personal act.

While there may have been some vague notion of 'infamia' before the establishment of the censorship, the conception generally given to it, that is, the idea of legal disability involved in it, could not have had its origin earlier than that time. It is closely related to the office of censor and later to that of praetor. No stigma was attached to the person whose name was erased from the list of the senate by the king or consuls but from
the time the revision of the list
was transferred to the censors it
influenced disgrace. Festus (p. 246) says
that rejected senators were not
formerly held in disgrace because
for the things close those whom
they should have in the Public
cof fid, so consuls and military
tribunes with consular power chose
certain of the patricians and fi-
nally of the plebeians most closely
confronted with themselves until
the time of the Livonian Pleading
which by which it was decided that
the censors should choose for the
senate "ex omnibus ordine optimus
que vque" from which it came
about that those who were rejected
and moved from the Senate were
considered "ignominiosi."

The has given an account of the
beginning of the censorship. But it
he says that in the consulship of
Marcus Largamus Macerinus and
Tiberius Sempronius Capitolinus 443 B.C.
the censorship was established - a
thing which arose from an humble
origin, but afterwards increased
so much in importance that
in it was vested the regulation of
the morals and discipline of Rome. The senate and centurions of knights were under the sway of the office and the legal right to public and private places. The original duty of the censor was, as their name indicates, the taking of the census—the numbering and registering the people, assigning them to their tribes etc. At this census each citizen was required to give his own name, that of his father, his age, the name of his wife as well as the number names and ages of his children—if he had any. He then had to give an account of all his property, so far as it was subject to the census.

Out of this grew the so-called "regimen mundi" rule of manners applied to the power the censor exercised over the morals of the people. Cicero de Leg. I. 3 says: "ceorces munes populi reguntur; "Roburque in senatu reclinato," and Liv. II. 5 says: "in relatio equitumque centumis decoris debeatque disciplinae a gap magistratus asset."
This duty, this "regimen morum" invested the censor with a peculiar kind of jurisdiction which in many respects resembles the exercise of public opinion in modern times, for as at the present time there are many actions which are acknowledged by every one to be prejudicial and injurious and yet which do not come under the jurisdiction of positive laws, so in the time of censors there were many cases in which he used his "nota" that would not come under the definite laws of the times.

The censor then, arranged the people in tribes, centurias and classes. Besides this it came to be a part of his duty to make out the list of senators, striking out the names of such as he considered unworthy and making additions from others who had the proper qualifications.

But this duty does not date from the beginning of the censors. For some time after the establishment of that magistracy the consuls still retained the right of filling the senate.
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Greeneidge places the date of the censor's assuming this duty somewhere in the fourth century B.C. — probably between 318 and 312. If we agree with Mommsen, this lectio senatus was transferred to the censors by the earlier plebiscitum. The only account we have of this plebiscitum is given us by Festus (p. 246) who says, "qua (referring to the plebiscitum) sanctorum est, ut censores ex omnibus ordine optimum quemque curiam in senatum legentem, qua factum est ut quod potenteri dissentit loco muti, laudarentur ignominiosi." Now this plebiscitum was passed about 312 B.C., hence we infer that before this date the censors had nothing to do with the lectio senatus.

From this duty of the censor it is easy to see how the idea of inania, of disqualification for office arose. There was at first at least no definite law providing for the disqualification, but it seems to have been left entirely to the censor's judgment. Greeneidge says: "The fixed principles of disqualification so far from
being imposed on the magistrate, 

work without, were created by 

them, at least in the main. 

If then the censors made out 

the list of the senate, choosing some 

naturally serious, what may the 

grounds upon which this dis-

qualification and rejection was 

based, and were they the same 

for succeeding centuries? 

We have seen that the law which 
gave this right to the censors, at 

least in so far as it has been 

preserved for us, was very indef-

inite. To be sure it says that 

the censors should choose for 

the Senate "optimum quaeque" 

but it does not state what 

qualities a person must have 

to be considered "optimum," nor 

does it on the other hand, give 

those things which would make 

anyone unworthy of being con-

sidered "optimum." Since the 

moral and social standards of 

Rome were constantly changing, 
is it not natural that the 

qualifications necessary for the 

application of the term "optimum"
should vary at the same time? therefore each censor might see fit to deviate a little from the path of his predecessor. However in the lex Julia Mucellaris we find certain grounds for disqualification mentioned. It is in this law passed in the fourth consulship to Julius Caesar that we find for the first time, a definite statement of those who shall be considered disqualified and it is upon this law that most of the works on 'infamia' are based.

But before turning up these special grounds for disqualification there are one or two points which should be discussed before 'infamia' and its workings can be perfectly understood. In the first place we must decide whether the censorial process was a 'judiciwm' or yet, like this point for on many other connected with 'infamia' for great difficulty arises from the fact that the authorities give few examples and are apt in many cases to give the exceptions rather than those cases which follow
the general rule.
Cicero argues against its being a
judicious preening to pull it
was prejudiced against the whole
idea of justice. He exercised by the
senses, we must admit and I
must, therefore make allowances
yet we can not strike out his
guineas entirely and indeed it is
to him that we continually turn
for evidence. In his chresto de
Provinciarum Consulibus, he uses
notio: "ducis aut veris stutuendum
est... censorium quisimac ac
notiam et illud morum ser-
issimorum majestatem non esse
tenere". Again he uses notio in
Λ. Septimio XXX: "numus vero appro-
et gravissimum judicium sanctis-
suadi magistratibus de republica
alleretur". The several stances takes
notio. For instance in XXXIV 25. He
says that there was a debate in
the senate about the case of Marcus
Firius, Prefect of Taranto; if
different opinions were expressed as
to what course should be adopted.
those taking the middle course declaring Cad censores non ad
Deuotitatem notionem de eo pertinentem

The dictator is speaking

C. Flamininus. T. Annius censores
in senatum legissent, transcribi
tutum recitarique esse pussimum
que unum hominem
judicionum arbitrorumque de fama
ac moribus senatus ius supr.

Cicero takes the word "judicium"
ife strict meaning of trial.

pro Cluentio he says "quid
igitur censures seuti supiit? Ne
ipsi quidem ut gravissime dixit
quidquam alium dicere prater
tertium atque iuravit. Nil il se

It has already been shown that
at first at least the censor's
infirmitas rested entirely in his hands and was exercised at his own discretion. If so, then, at first we would not be justified in supposing that the process was a proceeding which implies the presence of certain of the essentials to a trial. We will endeavor to prove that Cicero is not right in making a definite statement that none of the regular accompaniments of a trial were present. To be sure these were not necessary but there is direct evidence from the Latin writers themselves that they were sometimes used. If the fact with which the censors were concerned was already proved there would be no need of them but if it was only believed by the censors and not yet proved, there might be something like a 'judicium' before the censors would pass his judgment; or rather would misthink 'infirmitia'. And here we look to Cicero again for evidence or rather for an example which may serve to prove this statement. To be sure the power still rested in the hands of the censor.
but we are led to suppose that the
censors who were conscriptions in
the performance of their duties
would not cause a person to
suffer from infamia unless a
third party should bring an ac-
cusation and the evidence should
be sufficient to warrant the
censor, exercising his power of
infamia. The example referred to oc-
curred in the censorship of Scipio
Africanus in 199 B.C. The fully believed
a certain knight guilty of perjury but
when no one would dare to testify
he said "invenit equum (inquit) Sacerdos,
ac luciferas censoriam notam ne
ego in his personae et accusatorial
et testis et judicis partes egresse
video." (pro censure X L X I ).
That such a thing as a prosecu-
ator was possible with the census is
shown by a remark in Livy XXIX, 4, 2-
"longe provisius in i. Quin tium
oratio est, qua si accusator ante
notam, non censor post notam
usus esset, retinere i. Quintium in
genetum ne frater quidem i.
quin tium, si tum censor esset, potu-
isset."
Valerius Maximus furnishes evidence that witnesses could be summoned:

"...Valerius Maximus et C. Junius Fabrius Pontius censores J. Antonii senatus movemnt quem, quam virginem in matronam duperat, refusa dasset; 'nulla enim statuta in consiliis adhibitos.' (II. 9)

Another way in which the censor's process resembles a modern "in the gnomous" is to plead the cause before the censor. An example can be cited from here, where there is a sym- mons and it is in the first part of the third century B.C. - "ceni- duros... ad mores hortorum re- gendos triumnum adverterunt ans- stigandique vitia, quae... to nota belle grant." M. Caelius Metellus was the first one summoned - "quiso deinde et reteraque ejusdem mense reis causam dixere, dixit Purgani nequissint pronuntiument."

But by the close of the Republic we find that impeachment by a third party is made necessary by a plebe nate of the year 58 B.C. Strabo says "quae censores in senatu legendo soterirent, nee a rei impo- nundia efficiunt nisi qui adhuc
In accusatus et intrinseque censoris sententia damnatur esse et. This law, however, was repealed not many years later.

But there is one important point in which the ordinary judicarius differs from that of the censor - that the Roman court and in the courts of the present time there was a definite legal punishment as a result of condemnation. In the censor's court the punishment was not like that of other courts. Indeed it may be questioned whether it was, strictly speaking, a punishment at all. It merely marked the condemned with 'infamia', disqualifying him for certain offices or restricting him from his rank.

All this seems to point to the fact that while the censor's process connected with 'infamia' was in some cases merely a 'notitia' in others it approached a 'judicium'. Though not like one it is every respect. Hence it is not strange that we find both terms applied. It has already been stated that the censor's use of 'infamia' depended largely upon this form
judgment. But the question arises, was there no check placed on the censor or was his power in this case absolute? Since the tribune was the only one whose power might be used in checking to a certain extent the censor's arbitrary use of his veto, we would naturally expect to find some such check. In fact, it is ineffective. In 60 B.C., in fulfilling the suffering from actions while tribune, "In multis qui adeunti, inter qua P. Putilius qui tribunus plebis esset violenter accusatur; tribu quoque, in motu et avarice factus."

That there was no definite check on the censor during the Republic is evident from the fact that in 58 B.C., the tribune Clodius deemed it necessary to have the plebiscite passed which has already been mentioned and which provided that no one should be passed over in choosing the senate or should suffer from any of the results of 'inflamma' unless an accusation had been brought against him and he had been
condemned by both censors. One might perhaps look for a check on the censor's power in the fact that the time for holding office was limited to eighteen months and that re-election was not allowed. This shows the feeling on this subject in XXIII 23, "dictator ubi cum victorius in rostra ascendit... se probare dixit... nec censoriam viam permiscam ut eadem iterum..."

However, this may be, the check lies only in the fact that the same censor could not exercise their power for an indefinite period. During the time they did hold office, this would provide no check. But there was one check which was effective, probably the most effective of all. This arose from the collegiate nature of the office. This collegiality was characteristic of many of the Roman magistrates. The fact that one censor could not act without the consent of his colleague would naturally have more or less weight as the censors were or were not in harmony with each other. But in spite of this, we are led to believe that it would prove an
effective check if one should be found necessary. One of the censors might want to have a certain person removed from the Senate or suffer some other kind of infamia. But unless his colleague agreed, no such thing would happen. The colleague might deem him worthy of the highest rank and take this means of keeping him in it. While occasionally the censors may have used their Power of veto merely to suit their fancy, we must not believe that it has never used when sound judgment made it necessary. However, that the censors did not always disagree we know from Livy. Fulvius and Lucius Postumius Albins (173 B.C.) "censor cum in republica censura frui, illumque iure senatorii movendum, simulque equo admitteri, secrarum pecuniae tribun movendum, neque ubi alter noratus alter probavit." And five years later, in the censorship of Caecilia Metellina and Lucius Aemilius, there is apparently perfect harmony: "Aliae veniam habent senatu remoti, et senator remoti, senatus consultum perfectum securum, senator remoti ab eo qui consulat, severum securum, et senatus senatum securum."
et egres vendere jusse. Unnes idem ab inturoque at tribu moti et au-
rami justi. negre nullius, quem
alter nostrum sub altero levata
ignominia." (p. 465, 137).

But now that we have discussed to some extent the nature of
infamia and phases of the censu's
exercise of it, let us turn to the
grounds for disqualification: the
actions which called forth the
censor's displeasure to such an
extent that he deemed it neces-
sary to use the 'infamia'.

Any attempt that might be made to look for a definite statement
of the causes of disqualification
in the various stages of The Re-
public would be disappointing,
As has already been said, the
grounds for disqualification grew
from time to time than law
and the censor had free use of
their will and judgment in de-
termining who should suffer from
infamia" and on what grounds.

And yet when we say that 'infamia'
grew from custom the must also
consider that custom did not
then, as it does not now, remain
the same. It varied from time to
time as did also the moral and
social standards.
If, as has been already stated, the
censors depended on their own judg-
ment in the exercise of their 'censoria' we would expect the rules
depending on the disqualifications, if there
were any, to come from the censors
and not to be imposed on them
by others or any other outside au-
thority. And this it seems to be
the case at least during the greater
part of the Republic. It was the
system of Roman magistrates
to issue edicts when they entered
upon their term of office. If
the grounds of the censor's
'censoria' began to assume a per-
mistent character and if they
were controlled by no definite law,
it would be natural to turn to
the censor's edict as the only means
by which the permanent character
might be assumed. Mommsen who
has evidently good authority for
his statement says that the cen-
sors upon entering their office
published an edict or as the
Roman calls it "formula censoria" or "lex
censuri censendos dicta" and he gives the credit of originating the application of the word "edict to the edict... censures... inoczune... different legs in censuri censendos distinguere esse" (King 14). While each magistrate might issue an entirely new edict when he entered upon his office, it is probable that gradually each one came to use that of his predecessor as a basis at least for this one. Conditions might vary so that changes and additions would be necessary and still an entirely new edict would not be necessary. Since some grounds for disqualification may have seemed more important than others, permanency may have been acquired earlier in some than others. As we shall see later, Cicero proves that in some cases at least censors accepted the decisions of their predecessors. The first definite statement we have of the grounds for disqualification comes in the Lex Julia Municipalis already mentioned. It is on this law that much of what has been written on this
The justification mentioned in the first section may be roughly classified in groups; and it will perhaps be best to study these groups separately. The disqualifications refer to membership in the councils of the municipal towns, etc., and municipal colonization, prefecture, etc. Concordia. Prefecturae senatus. Sunt et qui in comuni quo municipio colonia. Prefectura conciliabula in semetione. Faciuntur conscribere, in liceet. Quem quinque. In senato. Sunt et qui in comuni quo municipio colonia. Prefectura conciliabula in semetione. Faciuntur conscribere, in liceet. Quem quinque.

Caesar's plan seems to have been to establish a government in which the various towns should be similar to Rome. If this is true, it is not natural to suppose that the organization of the councils was based on that of the senate at Rome and that the grounds for disqualification which he mentions in his De Julia were similar to those existing in Rome at that time.
The first eight disqualifications might be grouped together. They follow as a result of theft, breach of trust, breach of partnership, breach of confidence, breach of agency, malicious intent, fraud, cheating, minors. "Mali est iniuria condiscipuli parturiae est erit; quaeque sicuti gaudia prae socorribus consensum, tutelae, mandatii, iniculum deline, doloso malo condiscipulus est erit; quaeque leges Plauto e aduersus eam legem fact fuerit recent condiscipulus est erit." (Pl. Julius I 108 et 78).

When we come to this law we see that there is no longer need of the censors' judgment as to who should be disqualified; for there is a definite statement of the grounds for disqualification. There is no reason to believe that there was no connection between these special grounds and the ones the censors used as a basis for their authority. We have already said that the grounds for infirmity were not imposed upon the censor from without but were rather created
by him. That was the natural growth of the institution, but at the time of this bye Julia the growth had reached a place where its results could be made the basis of a certain law. The Roman state has, we know, the outgrowth of the family idea. Then, omitting the relatives of infamia to family life, we find the first group of the law which has already been mentioned to be as it were, the result of the next stage in the development of Roman law. This stage is one where the development is far from perfect and it seems to me that there is great need of some such thing as infamia since legal sanction played little part in the obligations of the time. These obligations were governed largely by that which the Romans called * bona fides* and it is a violation of this principle which must have formed the basis of the censor's *infamia*. Just what this *bona fides* was it is not easy to say. Doubtless the Romans understood what it meant so far as there was any
definite meaning - at least they recognized the importance of it. Cicero himself admits that it was a hard thing to define - In his De Officiis Inf 17 he says, "Si quis sine bona et quid sit bene magis quaestio est." He then goes on to say that Quintus decrevolis, not Felix Maximus, thought that the greatest weight was attached to those judgments to which were added the words "ex fide bona" and that the name "bonae fidei" was considered non tullius, sequentibus judiciis mandato, rebus emptis venditio, conductio, locatio, quibus vitae societas continetur, in his magis esse judicio, statuere quid queaque (quique quanum sportet). In his letter to Tiberius (ad Fam. V 1 2) he shows the idea of honor and regard for another connected with bona fide - "Quo ergo illa exist formula judicii, ut inter bona fugier scene sportet?". His aim seems to be "qui fuit nunc mihi non cognovi." Since then good faith or in the Romans called it "bona fide"
was so important in Cicero's time, is it not a natural conclusion that the idea originated before his time, perhaps increasing in importance as time went on? And since it was so important, it is more than likely that the violation of it in connection with certain obligations would call forth the censor's displeasure and result in infamia.

Wherefore, we find condemnation for breach of certain obligations mentioned in the Lex Julia as resulting in infamia, or disqualification for membership in the councils of the municipia, etc., it seems safe to draw the conclusion that the same grounds for disqualification existed at Rome and that they had been occupying a permanent character through the censor's edict and that of the praetor which we shall see was based somewhat on the former. Yet so unsatisfactory and incomplete is the evidence of Latin writers that we must only draw the conclusion from what little we have and from what we
known in general of Roman life, the writer on whose authority we are compelled to rely largely is Cicero, and although he lacks specific instances of persons suffering from infamia as the result of censure in certain cases, yet Cicero states so definitely that such was the case that he must take his statements as authority. In his Pro Porscio Comoehott he shows that condemnation in these notions should as they doubtless did come under "infamia" or rather he uses the positive "extinction." "Iusae ex societate debetur? Duidas? Iste quum negauerent periculum est, neguerunt negligenter defendendum. Si quae sunt privata judicia sum divisorum capitio, tu haec sint ad necem extirpationis iuris pene diesin epitopia tua haec sunt. Judiciae tutelae, societatis. No est, fidelem praegere, quae continet vitalis et suppliuit fundare. Quin in tutela perperum et eos sic fallere. Qui se in negatili conjurent. "If mandate" she says, "in minuendo rebus, quin
mandatum neglexerit, turpissimo judicio condensatus, necesse est. In minimum privatique reprehensione, negligence, in crimen mandati, jucundique infamiam revocavit. Propterea quod si recte mandat, non illun. Unum mandatum recusavit. Pro Sectis Roscianus Amorino A. D. In the preceding paragraph, he shows that because of "mandatum non minus turpe quam justi.

The next classification of those suffering from informa ought to include those exercising certain trades and professions. These belong those who have found themselves to serve as gladiators, those exercising the trade of lanista, actors, and those exercising the trade of undertakers and registrars of deaths. "Quoque de praecordial causse duotoratus est esse. Justum fuerit, quasi lamistatis artesque ludicrias fuerit fecerit (Ex. Julius 25). "Neque quis, nisi praecordium, designationes libitamentum facerit, de signum
It was not here, as in the former group, the result of condemnation for any actions but rather the result of trades and professions which the Romans considered disgraceful; hence the idea that any one exercising them would be "infamous" and not qualified for office. Here the original conception of "infamous" based on the judgment of the censors is lost sight of in so far as we find it resulting from social censure.

But why did "infamous" result from such trades and professions? Perhaps to a certain extent the Romans considered them disgraceful in themselves but the underlying principle seems to have been that of receiving pay. As a citizen of a free state independence...
to be destroyed when pay was re-
cerved. Since these professions were
carried on at Rome for pay and
since there was a strong prejudice
against them it seems reasonable
to suppose that when they are
mentioned in the lex Julia as
disqualifying for office and for
membership in the councils of
the municipia, etc., it is merely
a result of the growing develop-
ment of this feeling at Rome.
and that it arose itself, in turn,
resulted from the same cause.
No written law before the lex
Julia had so far as we know
mentioned these grounds for
disqualification. Yet the tribes
of the equestrian which had been
growing more and more per-
manent must have given rise
to that law.

Although, doubtless, all these pro-
essions were followed by 'influen-
za,' the prejudice seems to have been
particularly strong in the case
of actors. At this time we find
the idea developed that actors
should be excluded from all privi-
leges. Cicero is quoted in Augustine
de civitate dei 13 as saying "cum arte munificentia totam
probo differente genere id homin-
monum non modo honores civium
religionum capere, sed etiam tribu-
mores notitiae censoria volu-
mentum". As a result of this "infamia" we find the actors forming a dis-
tinct class of persons. They did
not belong to the tribes nor were
they allowed to be enlisted as
soldiers in the Roman legions. They were therefore usually either
friars, foreigners, or slaves.
In the time of the emperors men of
Cicero's made no difference
if they were actors they were "legally
infamities". It is true that late in
the time of the emperors men of
equestrian rank either of their own
accord or on compulsion often
appeared on the stage and this
opened the question of the social position of
actors but their legal status
remained the same. They still
suffered from "infamia" if they were
still excluded from offices of the
heritance of various provincial
honours. From Libya we have
evidence that actors were degraded from their tribe. The Atellan plays, which grew out of scenic performances established in 364 B.C., to appease the wrath of Heaven seem to have been considered apart from the regular plays and the performers seem to have been exempt from the disgrace of the ordinary actors, Livy tells us this (II, 2). At the same time simpleing the disgrace attached to regular actors - "quod genus Epidorum ab Istia accepturn, territ inuentus nec aliis histriinibus, Pollui passa est, es institutionem nullam, ut actores Atellanum nec tribu moverant et stipendia, tanta nam expertes artis ludicres, faciant".

The next group of disqualifications in the Res Julia deals with bankruptcy. "Quoive in juro bonum copiosum obliteravit, Homonojus copiosum fraus juro, venit; quem spontemus abeditoribus suis suscipiantur remunetravit se solumm solvere non posset, exprir opus datum dispensavit Est cist quibusse bona expediri
ius quodumque deixando praebuit praetextum si quies publicae caussa abesset
vel quod dolos voluit facere fecit
qui magis sei publicae caussa
abesset possessa prorsusque
sunt erunt.“ I defy we see the
different phases of bankruptcy dis
qualifying for membership in
the body of the municipal
This idea was doubtless a result of
the severity of the Roman law of
debt and debtor. With the Romans
failure to pay a debt was regarded
as a failure in civic duty and
since ‘infirmity’ was so closely con
nected with the idea of civic honor
it seems only natural to sup
pose it to be visited upon one
failing in this duty. But it
was probably not till the last
century of the Republic that in
firmia resulted from bankruptcy.
Previous to that time unenforce
ment from debt had been gradu
ally disappearing and the enforced
sale of the debtor’s goods by the
creditor had been taken in to
place.
That in Cicer's time bankruptcy was considered mostly of inhumanity is shown by his life of Tit. Pub. Quintus. "Pecunia mea totas suas iura titum subiit: ut ..."

...non ius sed ius comminiatur. Quintus, quod sua multis in hostis dividisti, me in civitate fit? nec honestissimus effudit, utinem? nec numeretur inter vivos, de eodem de vita et orationibus suis omnibus? But we turn to Cicer and find that a particular case in which 'infirmita' was involved. It is the case of Antoninus who afterwards became his colleague in the consulship. In the Petitione Consularis he says, referring to Tit. Antoninus, "eorum alterius bona proscripti victimum, ut ex pelle in extremitate vicissimus." But this 'infirmita' was not permanent in his case, that is, it did not afterwards exclude him from holding a seat in the Senate.
such an early date as other causes yet by the end of the Republic it was invoked to such an extent that it was included in the permanent categories of the lex Julia Municipalis.

Let us now turn to another clause in the lex Julia, one that deals with disqualification resulting from condemnation quaeque judicio publico Romae condemnatus est aetum, quocircum cum in Italia esse non licet.” Since the lex mentions particularly condemnation involving exile, we would infer that not all condemnation resulted in "infra tania" at this time. It probably took many years to develop even the simple idea that condemnation in a judicium Publicum would result in "infra tania"

The "judicium Publicum" were. We know not all alike but each was established by a special law. This law stated the offence, procedure and punishment and the disqualification following condemnation in the particular court for which the law provided.
For example the lex Cornelia de
Ambitu which was passed in 181 B.C. provided that no one condemned
under it should hold a magistracy
for ten years. "dannati legge,
Cornelian hoc genus poena forebat
magistratum in petitio de
decem femor abstulercet" (Schol.
Bob. in Cic. pro Sulla 5, 17 p. 361 Chell.)
Here the disqualification which
lasted ten years was regarded a
part of the punishment. But not
developed so strongly against this
crime that by the lex Calpurnia
passed in 67 B.C. "Calpurnia" was
made permanent, that is, any
one condemned in that charge
was excluded permanently from
all office and accordingly to
do is Cassius XXVI, 21, from the senate.
The statement is given in the
same passage as that mentioned
above in connection with the
lex Cornelia de Ambitu. "Aliquanto
postea severior lex Calpurnia et
Aemilia multarit et in perpetum
honores curere quaeat dominato.
Here again "infamia is considered
part of the punishment."
The Seneca's Repetundarum, one of the laws passed before the Lex Julia Municipalis, that is about 59 B.C., furnishes evidence for disqualification resulting from condemnation. It provided that persons convicted under that law should be disqualified as witnesses in his life of Julius Caesar (43) mentions the removal from the temple of the convicted, "Jus laborisquae ac severissime dict. Repetundarum convicto et igne orbini senatorio movit." Thus when we come to that clause in the lex Julia dealing with disqualification as the result of condemnation in a disgraceful suit, we may believe that there was a more definite authority for it than for the other provisions since in the various laws enacted previous to this time in connection with the question of perpetuity there had been the statement that disqualification followed after condemnation. The remaining grounds for
disqualification given in the Sex
India need but little notice. "quem
eve halemniae praecurrituris
causa acceptasse peciusse judi-
cation est erit, quinque apt
exerciseum innumus causa
ordo ademptus est erit, quinque
imperator innumus causa
at exercitum decedere viginti;
quid fit caput civit Romanae
referendum peciumis praemum
aliquid und repetit repetit." There
these but there is no reason
why we should not believe that
such disqualifications existed at
same as well as in the municipia
the last disqualification in that
region was probably of comparative
late origin as it had reference
to the Sullan proscriptions.
Let us now turn to another
phrase of "infamia" which is in some
respects similar to and in some
respects different from the censorial
"infamia." It is the "infamia" as
exercised by the praetor. This is the
conception of "infamia" as it is
found in its final stage, yet
for its beginnings are found in
the Republic, it will not be out of
place to mention it here.

In discussing these two kinds
to ask what the relation between
them was, whether they were en-
tirely independent or based one
on the other. The censorian infania
was in existence before the praetor-
ian hence if there was any re-
lation between them the praetor-
ian must have been based on
the censorian.

Greenidge J. 115 gives as one of
his arguments that the conceptions
of the censorian infania was in existence in a fully de-
veloped form and that it would
be natural for the praetor to
make use of it. But this argu-
ment can have no weight unless
it is supplemented by some proof
that he did so. This will be found
later by showing the points of sim-
ilarity between the two.

Greenidge gives certain other ar-
guments on the relation of the two
infania which seem worth in-
vestigating. One of them he derives
from the general nature of the
two. The Practorian 'infania' had for its object to preserve the dignity of the Practor's Court to exclude from it objectionable persons. The object of the censuarian 'infania' was similar except that its field was broader. That is, it excluded from the service to the state, the army, senate etc. persons who from their actions or occupations were considered objectionable. Since the objects of the disqualification of the two were similar, it was natural that the grounds for disqualification should be much the same and since the censuarian 'infania' existed first the Practor would turn to that for this. The third argument Greenidge uses needs little discussion. It was based on the similarity of the language used by the censor and practor and when we find such words as 'notis, innotate' etc. used in both, we must agree that they bore some relation to each other.

But before discussing the main proof, that is the similarity of the two, it will be necessary to
mention, at least, the nature of the praetorion 'infancia'. It was in connection with his court that the praetor exercised his 'infancia' and it resulted particularly in disqualifying persons for postulating in that court. It has already been said that the praetor's object of using 'infancia' was to preserve the dignity of his court and it was in preventing those from postulating whom he considered disqualified that he did so.

As in the censorian 'infancia' the grounds for disqualification were embodied in the censor's edict so in the praetorion 'infancia' the edict has a similar base. There are three rules for postulation given in those edicts - one referring to those not able to postulate for themselves, one to those able to postulate only for themselves and a third to those able to postulate for themselves and only in exceptional cases for others.

In Book III of the Digest is a list of those who are visited with
infamia" and we will endeavor to show the points of similarity between these and the ones mentioned in the Lex Julia which we have said was doubtless a codification of the censorsium "infamia dicunt infamia notatur qui ab imperatori cense cui de ea res statuendi protestas si re suscit. Compare with this the clause in the Lex Julia (25) which reads as follows "quemque imperator rmsnominum causa ab exercitu defende postulavit. This comparison shows a similarity in the grounds in the two "infamiae."

But take the next clause in the same section of the digest - "qui artes ludicrarum prosecucat divina causa in secentum prodierit "qui longominum fecerit." In the Lex Julia (25) "Quemque testimonium artecin ludicrarum fecit fecerit." In both "artes ludicrarum" and "longominum" are causes for "infamia."

Again, the words of the praetor are "in judicio Publico culmina praeservationes causa quid
feceisse judicium est. The same grounds for disqualification are
given in the Lex Julia as follows:
Quamquam salutis praebentia,
his causas accessisse feceisse
quod judicatum est erit. The
praetor's edict also says "De Juri
si bonorum raptorum sumitur
nume de dolo infano et justitiae
nomine dominatus facturae
erit, qui pro socio, tutelae manda-
dat, reperti suo nomine non
contradixit judicio dominatus erit.
The parallel passage in the Lex
Julia is "Quod justitiae, quod ipse
est sit, quae judicio judiciae
pro socio, tutelae mandat, in
jurianum deve dolo nolo con-
dominatus est erit."

These comparisons will show that
many of the causes of the two
infractions were similar and that
the praetor's infirmity, which had
its beginning in the Republic
and which reached its fullest de-
velopment in the time of the
Empire, was based largely on
the first form of "infirmity", that
exercised by the censor.
The influence of the Roman Republic

Isabelle Hagen

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